opposite of a sale. *Sears* v. *State*, 35 Tex. Cr. R. 442. The statute, specifying only the seller, by implication excludes the purchaser. *State* v. *Rand*, 51 N. H. 361. Similarly, a thief is not an accomplice of the receiver of his stolen goods. *Birdsong* v. *State*, 120 Ga. 850. A girl is not punishable as a party to her own seduction. *Regina* v. *Tyrrell*, [1894] 1 Q. B. 710. Nor is one accepting aid to escape from jail an accomplice of the person who furnishes it. *State* v. *Duff*, 122 N. W. 829 (Ia.). But in fact the buyer is a vital party to the sale. His action causes a breach of the law as surely as though he hired another to stab his enemy. These cases are properly explained as an exception to general principles based on public policy. The protection of the drinker intended by the statute would be nullified by his punishment. The state's most potent witnesses in liquor cases would be silenced through dread of conviction.

DAMAGES — MEASURE OF DAMAGES — CONVERSION OF STOCK. — The defendants converted the plaintiff's stock, then worth $45,125, which they were carrying for him on a margin. The stock declined before the plaintiff learned of the conversion. Within a reasonable time thereafter in which to replace the stock, its highest market price was $26,625. The plaintiff still owed at the time of the trial $15,000 on his loan. *Held*, that the plaintiff is entitled to $45,125 less $15,000. *McIntyre* v. *Whitney*, 43 N. Y. L. J. 1809 (N. Y., App. Div., July, 1910).

Damages in actions for conversion should fully indemnify the plaintiff and at the same time prevent the defendant from profiting by his wrongdoing. *Suydam* v. *Jenkins*, 3 Sandf. (N. Y.) 614. The New York rule of damages for the conversion of stock is ordinarily its highest market price within a reasonable time in which the plaintiff might replace the stock after discovering the conversion. *Wright* v. *Bank of the Metropolis*, 110 N. Y. 237. But the purpose of this rule is to indemnify the plaintiff when the value at the time of conversion would fail to do so, as when the market rises after the tort. *Barber* v. *Ellingwood*, 137 N. Y. App. Div. 704. The court in the principal case thus limits its application, and holds that at least the value at the time of conversion, with interest, may always be recovered. The rule may result in compensating the plaintiff unduly, for the fact that he had not discovered the conversion while the market was high is conclusive that he did not then wish to sell. But the decision is reasonable, for the other rule would give the tort-feasor the profits of the transaction and so put a premium upon misappropriations by brokers. *Taussig* v. *Hart*, 58 N. Y. 425.

DAMAGES — MITIGATION OF DAMAGES — BENEFIT TO PLAINTIFF. — The defendant town appropriated the plaintiff's property for highway purposes, without taking proper legal steps to condemn. The plaintiff brought trespass, and the defendant sought a reduction of damages by reason of the benefit which the plaintiff would derive from the highway. Both parties regarded the appropriation as permanent. *Held*, that the plaintiff may recover the full value of the land. *Pinney* v. *Town of Winchester*, 76 Atl. 994 (Conn.).

If the plaintiff's land had been properly condemned, damages would have been assessed under the Connecticut rule in eminent domain, allowing a set-off for special benefits to the remaining land. *Trinity College* v. *City of Hartford*, 32 Conn. 452. If the authority to condemn is not strictly pursued, the person acting under color of it becomes a trespasser, liable in some jurisdictions to exemplary damages. *Stewart* v. *Wallace*, 30 Barb. (N. Y.) 344; *Anderson, etc. R. Co.* v. *Kernodle*, 54 Ind. 314. The principal case is right in refusing to apply the rule in eminent domain to a clear case of trespass. The act is unlawful, and benefits imposed upon the owner cannot be applied to reduce damages. *Turner* v. *Rising Sun & Laughery Turnpike Co.*, 71 Ind. 547. The usual rule is to award damages for the trespass, and to compel the defendant to gain title

by lawful condemnation. *Republican Valley R. Co.* v. *Fink*, 18 Neb. 82. But where both parties treat the appropriation as permanent, damages may be assessed with reference to future injuries. *Fowle* v. *New Haven & Northampton Co.*, 107 Mass. 352. Hence the full value of the land is a fair measure, the judgment operating as a bar to future action.

EASEMENTS — PRESCRIPTION — RIGHT OF WAY OVER RAILROAD PROPERTY. — A railroad company had owned for seventy-five years the fee of certain land. Persons living in the neighborhood had used it as a road for thirty or forty years. *Held*, that, since prescription rests on the presumption of a grant, which a railroad company has no power to make for other purposes than those for which it acquired the land, no prescriptive easement of right of way can be acquired against a railroad. *Blume* v. *Southern Ry. Co.*, 67 S. E. 546 (S. C.).

The South Carolina court permits the acquisition of a fee against a railroad by adverse possession, but distinguishes the case of an easement by reasoning based wholly upon the fiction of a lost grant. *Hill* v. *Southern Ry.*, 67 S. C. 548. See *Matthews* v. *Seaboard Air Line Ry.*, 67 S. C. 499. It therefore falls into the error of considering the matter as a question of what a railroad can transfer voluntarily, rather than what can be acquired against it by reason of its laches. The case illustrates the desirability of abandoning the fiction of a lost grant, and resting prescriptive easements upon the plain analogy between adverse user and adverse possession. *Krier's Private Road*, 73 Pa. St. 109. The better cases agreeing in result with the principal case proceed on the ground that a railroad's right of way, being of a public nature, is unaffected by adverse possession. *Southern Pacific Co.* v. *Hyatt*, 132 Cal. 240. A well-considered case holds that where a railroad constantly uses a track on its right of way an easement cannot be acquired thereon by prescription. *Pennsylvania R. Co.* v. *Freeport*, 138 Pa. St. 91. But this exemption should not be extended to unimproved railroad property, and the weight of authority is opposed to the reasoning of the principal case. *Gay* v. *Boston & Albany R. Co.*, 141 Mass. 407; *Pittsburgh, etc. Ry. Co.* v. *Crown Point*, 150 Ind. 536; *People* v. *Eel River & Eureka R. Co.*, 98 Cal. 665.

EVIDENCE — OPINION EVIDENCE — MARKET VALUE. — In an action against a common carrier for failure to deliver household goods shipped by the plaintiff, the evidence of a witness, who testified that he knew the market value of such articles from having received the market quotations which covered the date in question, was excluded. *Held*, that the evidence should have been admitted. *Chicago, Rock Island & Gulf R. Co.* v. *Clark*, 129 S. W. 186 (Tex., Ct. Civ. App.).

That this is a proper method of proof is undoubted. *Whitney* v. *Thacher*, 117 Mass. 523. The theory upon which the decisions usually proceed is that the testimony of the witness is opinion evidence, and is admissible as such, though his opinion be based exclusively upon market quotations and price-current lists. *Fountain* v. *Wabash R. Co.*, 114 Mo. App. 676. It has also been held that the market quotations may themselves be offered in evidence, if their general accuracy is attested. *Sisson* v. *Cleveland & Toledo R. Co.*, 14 Mich. 489; *Cliquot's Champagne*, 3 Wall. (U. S.) 114. And recent decisions indicate that this view is gaining recognition. *State ex rel. Moseley* v. *Johnson*, 144 N. C. 257; *Mt. Vernon Brewing Co.* v. *Teschner*, 108 Md. 158; *Western Wool Commission Co.* v. *Hart*, 20 S. W. 131 (Tex.). If the documents themselves are admitted, it must be as an exception to the hearsay rule, and one which falls under none of the recognized heads. But to admit reliable market reports, such as guide men in business transactions, does not involve the dangers against which the hearsay rule is directed. And the practical convenience of showing market